

## § 68.34

shall be considered a notice of appearance on behalf of the respondent for whom the request was made.

(g) *Withdrawal or substitution of a representative.* Withdrawal or substitution of an attorney or representative may be permitted by the Administrative Law Judge upon written motion. The Administrative Law Judge shall enter an order granting or denying such motion for withdrawal or substitution.

[Order No. 2203-99, 64 FR 7077, Feb. 12, 1999, as amended by Order No. 2255-99, 64 FR 49660, Sept. 14, 1999]

### § 68.34 Legal assistance.

The Office of the Chief Administrative Hearing Officer does not have authority to appoint counsel.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

### § 68.35 Standards of conduct.

(a) All persons appearing in proceedings before an Administrative Law Judge are expected to act with integrity, and in an ethical manner.

(b) The Administrative Law Judge may exclude from proceedings parties, witnesses, and their representatives for refusal to comply with directions, continued use of dilatory tactics, refusal to adhere to reasonable standards of orderly and ethical conduct, failure to act in good faith, or violation of the prohibition against *ex parte* communications. The Administrative Law Judge shall state in the record the cause for barring an attorney or other individual from participation in a particular proceeding. The Administrative Law Judge may suspend the proceeding for a reasonable time for the purpose of enabling a party to obtain another attorney or representative.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

### § 68.36 *Ex parte* communications.

(a) *General.* Except for other employees of the Executive Office for Immigration Review, the Administrative Law Judge shall not consult any person, or party, on any fact in issue unless upon notice and opportunity for all parties to participate. Communications by the Office of the Chief Administrative Hearing Officer, the assigned

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judge, or any party for the sole purpose of scheduling hearings, or requesting extensions of time are not considered *ex parte* communications, except that all other parties shall be notified of such request by the requesting party and be given an opportunity to respond thereto.

(b) *Sanctions.* A party or participant who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions, including but not limited to, exclusion from the proceedings and adverse ruling on the issue which is the subject of the prohibited communication.

[54 FR 48596, Nov. 24, 1989. Redesignated by Order No. 1534-91, 56 FR 50053, Oct. 3, 1991]

### § 68.37 Waiver of right to appear and failure to participate or to appear.

(a) *Waiver of right to appear.* If all parties waive in writing their right to appear before the Administrative Law Judge or to present evidence or argument personally or by representative, it shall not be necessary to give notice of and conduct an oral hearing. A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the Chief Administrative Hearing Officer or the Administrative Law Judge. Where such a waiver has been filed by all parties and they do not appear before the Administrative Law Judge personally or by representative, the Administrative Law Judge shall make a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the issues in the case. Such documents shall be considered as all of the evidence in the case and decision shall be based on them.

(b) *Dismissal—Abandonment by party.* A complaint or a request for hearing may be dismissed upon its abandonment by the party or parties who filed it. A party shall be deemed to have abandoned a complaint or a request for hearing if:

(1) A party or his or her representative fails to respond to orders issued by the Administrative Law Judge; or